

## STATEMENT OF EMERGENCY

907 KAR 20:030E

(1) This is an emergency administrative regulation which establishes that the trust and transferred resource requirements established in this administrative regulation do not apply to individuals for whom a modified adjusted gross income or MAGI is the Medicaid eligibility standard or to individuals who formerly were in foster care and aged out of foster care while receiving Medicaid coverage. The Affordable Care Act mandates that effective January 1, 2014, that the eligibility standard for certain categories of individuals will be a modified adjusted gross income. Additionally, the Affordable Care Act prohibits the application of an asset or resource eligibility test for individuals governed by the MAGI rules. Also, the Affordable Care Act created a new mandatory eligibility group comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care but aged out of foster care while receiving Medicaid coverage and bars any income or resource standard from being applied to that group. As Medicaid coverage under the MAGI standards and for former foster care individuals is mandatory January 1, 2014 and eligibility determinations can begin October 1, 2013, this administrative regulation is necessary to be implemented on an emergency basis. Thus, the Department for Medicaid Services is implementing this administrative regulation on an emergency basis to exempt individuals under the MAGI rules and former foster care individuals from the trust and transferred resource requirements established in this administrative regulation.

(2) This action must be implemented on an emergency basis to comply with a federal mandate.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation.

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Steven L. Beshear  
Governor

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Audrey Tayse Haynes, Secretary  
Cabinet for Health and Family Services

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Emergency Amendment)

907 KAR 20:030E~~[907 KAR 1:650]~~. Trust and transferred resource requirements for Medicaid.

RELATES TO: KRS 205.520, 205.619, 205.6322, 304.14-640, 304.14-642, 42 U.S.C. 1396p(b)-f

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6322, 42 C.F.R. 435, 42 U.S.C. 1396a, 1396p

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has responsibility to administer the Medicaid program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. KRS 205.6322 requires the cabinet to promulgate administrative regulations to prohibit the sheltering of assets in medical assistance long-term care cases. This administrative regulation establishes trust and transferred resource requirements for Medicaid eligibility determinations for individuals for whom resources are considered for Medicaid eligibility persons.

Section 1. ~~[Definitions. (1) "Baseline date" means the date the institutionalized individual was institutionalized and applied for Medicaid.~~

1       ~~(2) "Cabinet" means the Cabinet for Health and Family Services.~~

2       ~~(3) "Fair market value" means an estimate of the value of an asset if sold at the pre-~~  
3 ~~vailing price at the time it was actually transferred.~~

4       ~~(4) "Income" means money received from:~~

5       ~~(a) Statutory benefits, for example Social Security, Veterans Administration pension,~~  
6 ~~black lung benefits, or railroad retirement benefits;~~

7       ~~(b) Pension plans;~~

8       ~~(c) Rental property;~~

9       ~~(d) Investments; or~~

10       ~~(e) Wages for labor or services.~~

11       ~~(5) "Institutionalized individual" means an individual with respect to whom payment is~~  
12 ~~based on a level of care provided in a nursing facility (NF) and who is:~~

13       ~~(a) An inpatient in:~~

14       ~~1. A nursing facility (NF);~~

15       ~~2. An intermediate care facility for individuals with mental retardation or a develop-~~  
16 ~~mental disability (ICF-MR-DD); or~~

17       ~~3. A medical institution; or~~

18       ~~(b) Receiving home and community based services (HCBS).~~

19       ~~(6) "Long-term care partnership insurance" is defined by KRS 304.14-640(4).~~

20       ~~(7) "Long-term care partnership insurance policy" means a policy meeting the re-~~  
21 ~~quirements established in KRS 304.14-642(2).~~

22       ~~(8) "Qualifying Income Trust" or "QIT" means an irrevocable trust established for the~~  
23 ~~benefit of an identified individual in accordance with 42 U.S.C. 1396p(d)(4)(B).~~

~~(9) "Resources" mean money and other personal property or real property that an institutionalized individual or institutionalized individual's spouse:~~

~~(a) Owns;~~

~~(b) Has the right, authority or power to convert to cash; and~~

~~(c) Is not legally restricted from using for support and maintenance.~~

~~(10) "Transferred resource factor" means an amount that is:~~

~~(a) Equal to the average monthly cost of nursing facility services in the state at the time of application. The average monthly cost shall be the average of the private pay rates for semi-private rooms of all Medicaid-participating nursing facilities; and~~

~~(b) Adjusted annually.~~

~~(11) "Trust" means a legal instrument or agreement valid under Kentucky state law in which:~~

~~(a) A grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee or trustees for the benefit of the grantor or certain designated individuals or beneficiaries; and~~

~~(b) A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries.~~

~~(12) "Uncompensated value" means the difference between the fair market value at the time of transfer, less any outstanding loans, mortgages, or other encumbrances on the asset, and the amount received for the asset.~~

~~Section 2.] Transferred Resources. (1) Transfer of resources on or before August 10, 1993.~~

~~(a) If an institutionalized individual applies for Medicaid, a period of ineligibility shall~~

1 be computed if during the thirty (30) month period immediately preceding the applica-  
2 tion, but on or before August 10, 1993, the individual or the spouse disposed of proper-  
3 ty for less than fair market value.

4 (b) The period of ineligibility shall begin with the month of the transfer and shall be  
5 equal to the lesser of:

6 1. Thirty (30) months; or

7 2. The number of months derived by dividing the total uncompensated value of the  
8 resources transferred by the transferred resource factor at the time of the application.

9 (2) Transfer of resources after August 10, 1993 and before February 8, 2006.

10 (a) If an institutionalized individual applies for Medicaid, a period of ineligibility for NF  
11 services, ICF IID services, or 1915(c) home and community based services~~[or ICF-MR-~~  
12 ~~DD services, or HCBS]~~ shall be computed if:

13 1. During the thirty-six (36) month period immediately preceding the baseline date,  
14 but after August 10, 1993, and before March 9, 2007, assets were transferred; or

15 2. During the sixty (60) month period immediately preceding the baseline date, but  
16 after August 10, 1993, and before March 9, 2007, a trust was created whereby the indi-  
17 vidual or the spouse disposed of property for less than fair market value.

18 (b) The period of ineligibility shall:

19 1. Begin with the month of the transfer; and

20 2. Be equal to the number of months derived by dividing the total uncompensated  
21 value of the resources transferred by the transferred resource factor at the time of the  
22 application.

23 (3) Transfer of resources on or after February 8, 2006.

(a) If an institutionalized individual applies for Medicaid, a period of ineligibility for NF services, ICF IID services, or 1915(c) home and community based services~~[or ICF-MR-  
DD services, or HCBS]~~ shall be computed if:

1. During the sixty (60) month period immediately preceding the baseline date, but on or after February 8, 2006, assets were transferred; or

2. During the sixty (60) month period immediately preceding the baseline date, but on or after February 8, 2006, a trust was created whereby the individual or the spouse disposed of property for less than fair market value.

(b) The period of ineligibility shall:

1. Begin with the month of Medicaid eligibility for NF services, ICF IID services, or home and community based services~~[or ICF-MR-DD services, or HCBS]~~; and

2. Be equal to the number of months derived by dividing the total uncompensated value of the resources transferred by the transferred resource factor at the time of application.

(4) Jointly held resources shall be considered pursuant to 42 U.S.C. 1396p(c)(3).

(5) The addition of another individual's name to a deed shall constitute a transfer of resources.

(6)(a) If a spouse transfers resources that result in an ineligibility period for the institutionalized spouse, the ineligibility period shall be apportioned between the spouses if the spouse is subsequently institutionalized and a portion of the ineligibility period against the first institutionalized spouse remains.

(b) If one (1) spouse is no longer subject to the ineligibility period, the remaining ineligibility period applicable to both spouses shall be served by the remaining spouse.

(7) The requirements of this subsection shall apply to an agreement in which an individual, prior to institutionalization, employed another person as a caregiver and made payment for all services provided by the caregiver prior to the individual's entry in a nursing facility.

(a) The caregiver agreement shall have:

1. Been notarized;

2. Identified and specified the cost of each caregiver service;

3. Specified that payment shall not have:

a. Been made for a service not recognized in the agreement as a caregiver service;

or

b. Duplicated a service provided by another source; and

4. Included a provision that required payment to be made by the caregiver to the individual for the cost of each caregiver service not provided in accordance with the agreement.

(b) The cost of each caregiver service that was not provided in accordance with the agreement and not repaid by the caregiver shall be considered a transfer of resources.

(8)(a) The requirements of this subsection shall apply to resources sold by contractual agreement, including land contracts or contract for deeds.

(b) The contract shall:

1. Be actuarially sound;

2. Not contain balloon payments; and

3. Be without forgiveness of debt if there is termination of the sell.

(c) A contract that does not meet the requirements established in paragraph (b) of

1 this subsection shall be treated as the disposal~~[disposal]~~ of assets for less than fair mar-  
2 ket value.

3 (9)~~(a)~~ The requirements of this subsection shall apply~~[be applicable with regard]~~ to  
4 annuities.

5 (b) A determination shall be completed regarding~~[with regard to]~~ the purpose of the  
6 purchase of an annuity in order to determine if resources were transferred for less than  
7 fair market value.

8 (a) If the expected return on the annuity is commensurate with the life expectancy of  
9 the beneficiary, the annuity shall be:

10 1. Actuarially sound; and

11 2. ~~[shall]~~ Not be considered a transfer of resources for less than fair market value.

12 (b) In accordance with 42 U.S.C. 1396p(c)(1)(F), the purchase of an annuity occur-  
13 ring on or after February 8, 2006 shall be treated as the disposal of assets for less than  
14 fair market value unless the cabinet is named:

15 1. As the remainder beneficiary in the first position for at least the total amount of  
16 medical assistance paid on behalf of the annuitant; or

17 2.a. A beneficiary in the second position after the community spouse or a minor or  
18 disabled child; and

19 b. A beneficiary in the first position if the community spouse or a representative of  
20 the child disposes of any remainder for less than fair market value.

21 (10) The purchase of an annuity shall be considered a transfer of resources if:

22 (a) The expected return on the annuity is not commensurate with the life expectancy  
23 of the beneficiary, ~~[thus]~~ making the annuity not actuarially sound; and



1 (b)1. The annuity:

2 a. Does not provide substantially equal monthly payments; and

3 b. Has a balloon or deferred payment of principal or interest.

4 2. Payments shall be considered substantially equal if the total annual payment in  
5 any year varies by five (5) percent or less from the payment in the previous year.

6 (11) The policies in this subsection shall apply regarding the transfer of home proper-  
7 ty.

8 (a) Transfer of home property to an individual listed in [this] paragraph (b) of this  
9 subsection shall not constitute a transfer of resources for less than fair market value.

10 (b) Home property may be transferred to:

11 1. The spouse;

12 2. A child who is:

13 a. Under age twenty-one (21); or

14 b. Blind or disabled;

15 3. A sibling who has:

16 a. Equity interest in the home and lived with the institutionalized individual for one (1)  
17 year prior to institutionalization; or

18 b. A child who:

19 (i) Resided with the institutionalized individual for two (2) years prior to institutionali-  
20 zation; and

21 (ii) Provided care to the individual to prevent institutionalization.

22 (c)[(b)] Transfer of home property to any individual not listed in paragraph (b)[(a)] of  
23 this subsection shall constitute a transfer of resources for less than fair market value.

(12)(a) For multiple or incremental transfers prior to February 8, 2006, the ineligibility periods shall accrue and run consecutively beginning with the month of the initial transfer.

(b) For multiple or incremental transfers made on or after February 8, 2006, the ineligibility period shall begin with the month of Medicaid eligibility for NF services, ICF IID services, or 1915(c) home and community based services~~[or ICF-MR-DD services, or HCBS]~~.

(13) An individual shall not be ineligible for Medicaid or an institutional type of service:

(a) By virtue of subsections (1) to (10) of this section to the extent that the conditions specified in 42 U.S.C. 1396p(c)(2)(B), (C), and (D) or 907 KAR 20:035~~[907 KAR 1:655]~~ are met; or

(b) Due to transfer of resources for less than fair market value except in accordance with this section.

(14) ~~[Disposal of a resource.]~~

(a) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual:

1. Shows the transfer was in accordance with 42 U.S.C. 1396p(c)(2)(B) or (C); or  
2. Presents convincing evidence that the disposal was exclusively for some other purpose.

(b) The value of the transferred resource shall be disregarded if:

1. The transfer is in accordance with 42 U.S.C. 1396p(c)(2)(B) or (C);
2. It is for a~~some~~ reason other than to qualify for Medicaid; or

1       3.a. The transferred resource was not a homestead; and

2       b. Was considered an excluded resource at the time it was transferred.

3       (c) If the resource was transferred for an amount equal to the assessed value for tax  
4 purposes, the resource shall be considered as being disposed of for fair market value.

5       (d) If the assessed agricultural value is used for tax purposes, the transfer shall be  
6 required to be for an amount equal to the fair market value.

7       (15)(a)1. After determining that the purpose of a transfer was to become or remain  
8 Medicaid eligible, the cabinet shall add the uncompensated equity value of the trans-  
9 ferred resource to other currently held resources to determine if retention of the proper-  
10 ty would have resulted in ineligibility.

11       2. For this purpose, the resource considered available shall be the type of resource it  
12 was prior to transfer, e.g., if nonhomestead property was transferred, the uncompen-  
13 sated equity value of the transferred property shall be counted against the permissible  
14 amount for nonhomestead property.

15       (b) If retention of the resource would not have resulted in ineligibility, the value of the  
16 transferred resource shall be disregarded.

17       (c) If retention would result in ineligibility, the cabinet shall compute a period of ineli-  
18 gibility for Medicaid or an institutional type of service as provided for in subsections (1)  
19 to (10) of this section.

20       (16)(a) ~~[The]~~ Uncompensated value shall be excluded from consideration if good  
21 cause or undue hardship exists.

22       (b) A waiver of consideration of the uncompensated amount shall be granted subject  
23 to the criteria established in this subsection.

1     ~~(c)~~~~(a)~~ Good cause shall be determined to exist if an expense or loss was incurred  
2 by the individual or family group due to:

- 3       1. A natural disaster, for example fire, flood, storm, or earthquake;
- 4       2. Illness resulting from accident or disease;
- 5       3. Hospitalization or death of a member of the immediate family; or
- 6       4. Civil disorder or other disruption resulting in vandalism, home explosions, or theft  
7 of essential household items.

8     ~~(d)~~ An~~(b)~~ undue hardship shall be determined to exist if:

- 9       1. Application of transferred resource penalties deprive an individual of:  
10      a. Medical care which shall result in an endangerment to the individual's health or  
11      life; or  
12      b. Food, clothing, shelter, or other necessities of life; or  
13       2. The cabinet determines that:  
14      a. The transfer of resources is not recoverable;  
15      b. The transfer of resources was not intended by the applicant to result in Medicaid  
16      coverage;  
17      c. The transfer of resources was made in circumstances beyond the applicant's con-  
18      trol; or  
19      d. The applicant would be unable to receive necessary medical care unless an un-  
20      due hardship exemption is granted.

21     ~~(e)1.~~~~(c)1.~~ The exclusions shall not exceed the amount of the incurred expense or  
22     loss.

- 23       2. The amount of the uncompensated value to be excluded shall not include any

1 amount which is payable by Medicaid, Medicare, or other insurance.

2 (f)~~[(d)]~~ If an institutionalized individual is subject to a period of ineligibility because the  
3 individual or individual's spouse disposed of property, assets, or resources for less than  
4 fair market value, the cabinet shall notify the individual in writing and include an expla-  
5 nation of:

- 6 1. The criteria upon which an undue hardship waiver may be granted;
- 7 2. The process for seeking an undue hardship waiver; and
- 8 3. How to appeal an adverse action in accordance with Section 5 of this administra-  
9 tive regulation.

10 (g)~~[(e)]~~ Upon consent of the institutionalized individual or individual's personal repre-  
11 sentative, the facility in which the individual resides may:

- 12 1. Request an undue hardship waiver on behalf of the institutionalized individual;
- 13 2. Present information to the cabinet regarding the institutionalized individual's case;  
14 and
- 15 3. File an appeal in accordance with Section 4~~[5]~~ of this administrative regulation on  
16 behalf of the institutionalized individual if the cabinet denies the facility's request for an  
17 undue hardship waiver.

18 (h)~~[(f)]~~ If the cabinet suspends or terminates a recipient's eligibility because the cabi-  
19 net discovers that the recipient or recipient's spouse transferred resources for less than  
20 fair market value and an undue hardship waiver is requested on behalf of the recipient,  
21 the cabinet shall provide payments for nursing facility services in order to hold the bed  
22 at the facility for up to, but not more than, thirty (30) days from the date of suspension  
23 or termination.

1     ~~(i)(g)~~ If the cabinet decides in favor of a recipient's request for an undue hardship  
2     waiver and reverses its previous decision to suspend or terminate eligibility, the cabinet  
3     shall cover the recipient's nursing facility services at the facility's full rate for the period  
4     the individual is eligible under the undue hardship waiver.

5     (17) Disclaiming of an inheritance by an individual entitled to the inheritance shall be  
6     considered a transfer of resources.

7     Section ~~2~~3. Treatment of Resources for a Long-Term Care Applicant who has  
8     Long-Term Care Partnership Insurance.

9     (1) The amount of benefits paid by the long-term care partnership insurance policy  
10    as a direct reimbursement to providers for long-term care expenses or benefits paid on  
11    a per diem basis issued directly to the individual shall be used during the eligibility de-  
12    termination process to determine the amount of resources the applicant shall have ex-  
13    cluded from the eligibility determination and protected from estate recovery in accord-  
14    ance with 907 KAR 20:025~~[907 KAR 1:645]~~.

15    (2) If ~~an~~the applicant disposed of a resource for less than fair market value resulting  
16    in a transfer penalty, the applicant may choose to apply the allowable exclusion, dollar-  
17    for-dollar, to the transferred resources for the purpose of avoiding a penalty.

18    Section ~~3~~4. Treatment of Trusts. (1) Regarding a Medicaid qualifying trust created  
19    on or before August 10, 1993, if an individual, or the spouse for the individual's benefit,  
20    creates, other than by will, a trust or similar legal device with amounts payable to the  
21    same individual, the trust shall be considered a "Medicaid qualifying trust" if the trustee  
22    of the trust is permitted to exercise discretion as to the amount of the payments from  
23    the trust to be paid to the individual.

1 (a) Except as provided by paragraph (b) of this subsection, the amount considered  
2 available to the trust beneficiary shall be the maximum amount the trustee may, using  
3 the trustee's discretion, pay in accordance with the terms of the trust, regardless of the  
4 amount actually paid.

5 (b) The cabinet may consider as available only that amount actually paid if to do oth-  
6 erwise would create an undue hardship upon the individual in accordance with Section  
7 1(16)(d)~~[Section 2(16)(b) of this administrative regulation]~~.

8 (2) For purposes of determining eligibility in accordance with Section 1(1) to (10)~~[2(1)~~  
9 ~~to (10) of this administrative regulation]~~ regarding trust agreements, the rules provided  
10 for under 42 U.S.C. 1396p(d)(3) shall be met and shall apply to a trust created after  
11 August 10, 1993 and established by an individual subject to 42 U.S.C. 1396p(d)(4).

12 (a) An individual shall be considered to have established a trust if assets of the indi-  
13 vidual were used to form all or part of the corpus of the trust and if any of the individuals  
14 described under 42 U.S.C. 1396p(d)(2)(A)(i), (ii), (iii), and (iv) established the trust other  
15 than by a will.

16 (b)1. If the corpus of a trust includes income or resources of any other person or per-  
17 sons, the trust rules shall apply to the portion of the trust attributable to the income or  
18 resources of the individual.

19 2. In determining countable income and resources, income and resources shall be  
20 prorated based on the proportion of the individual's share of income or resources.

21 (c) Subject to 42 U.S.C. 1396p(d)(4), the trust provisions in 42 U.S.C. 1396p(d) shall  
22 be applied in a manner consistent with 42 U.S.C. 1396p(d)(2)(C).

23 (d)1. Payments made from revocable or irrevocable trusts to or on behalf of an indi-

vidual shall be considered as income to the individual with the exception of payments for medical costs.

2. Payments for medical care or medical expenses shall be excluded as income.

(e) A trust which is considered to be irrevocable and terminates if action is taken by the grantor shall be considered a revocable trust.

(f) An irrevocable trust which may be modified or terminated by a court shall be considered a revocable trust.

(g) If payment from a revocable or irrevocable trust may be made under any circumstance, the amount of the full payment that could be made shall be considered as a resource including amounts that may be disbursed in the distant future.

(h) Placement of an excluded resource into an irrevocable trust shall not change the excluded nature of the resource.

(i) Placement of a countable resource into an irrevocable trust shall constitute a transfer of resources for less than fair market value.

(3) The treatment of trusts established in this section of this administrative regulation shall be waived if undue hardship criteria is met as established in Section 1(15)(b)~~[2(15)(b)]~~ of this administrative regulation.

(4) Regarding subsection (1), (2), or (3) of this section, for trusts created on or prior to August 10, 1993, any resources transferred into a previously established trust after August 10, 1993 shall be considered a transfer of resources and subject to an ineligibility period as provided for under Section 1~~[2]~~ of this administrative regulation using the thirty-six (36) month transfer rules.

(5) An individual may create a qualifying income trust, in accordance with this sub-



section, to establish financial eligibility for Medicaid.

(a) A transfer of resources shall not apply to a qualifying income trust if:

1. The trust is established in Kentucky for the benefit of an individual;

2. The trust is composed solely of the income of the individual, including accumulated interest in the trust;

3. Upon the death of the individual, the department receives all amounts remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of the individual by Medicaid; and

4. The trust is irrevocable.

(b) The money in a qualifying income trust shall:

1. Be maintained in a separate account; and

2. Not be commingled with any other checking or savings account~~[accounts]~~.

(c) The corpus of a qualifying income trust and interest generated by the trust shall not be counted as available income for an individual for the determination of Medicaid eligibility.

(d) A qualifying income trust shall state that the funds may only be used for:

1. Valid medical expenses, including patient liability; or

2. The community spouse income allowance established in accordance with 907 KAR 20:035~~[907 KAR 1:655]~~.

(e) All expenditures from a qualifying income trust shall require verification by the department that the expenditures~~[they]~~ are allowable expenditures.

(f) Allowable payments from a qualifying income trust shall be made:

1. Every month; or

2. By the end of the month following the month the funds were placed in the trust.

(g) If payments by the qualifying income trust are made for medical care, the individual shall be considered to have received fair market value for income placed in the trust.

Section 4. Applicability. (1)(a) The provisions and requirements established in this administrative regulation shall not apply to an individual:

1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or

2. Between the ages of nineteen (19) and twenty-six (26) years who:

a. Formerly was in foster care; and

b. Aged out of foster care while receiving Medicaid coverage.

(b) Resources shall not be considered for eligibility purposes for individuals

1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or

2. Between the ages of nineteen (19) and twenty-six (26) years who:

a. Formerly was in foster care; and

b. Aged out of foster care while receiving Medicaid coverage.

(2) An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:

(a) A child under the age of nineteen (19) years, excluding children in foster care;

(b) A caretaker relative with income up to 133 percent of the federal poverty level;

(c) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;

1     (d) An adult under age sixty-five (65) with income up to 133 percent of the federal  
2     poverty level who:

3         1. Does not have a dependent child under the age of nineteen (19) years; and

4         2. Is not otherwise eligible for Medicaid benefits; or

5     (e) A targeted low income child with income up to 150 percent of the federal poverty  
6     level

7     Section 5. Appeal Rights. An appeal of a department decision regarding Medicaid el-  
8     igibility of an individual based upon application of this administrative regulation shall be  
9     in accordance with 907 KAR 20:065~~[907 KAR 1:560]~~.

907 KAR 20:030E

REVIEWED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lawrence Kissner, Commissioner  
Department for Medicaid Services

APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Audrey Tayse Haynes, Secretary  
Cabinet for Health and Family Services

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 20:030E

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes Medicaid provisions and requirements regarding trusts and transferred resources for Medicaid eligibility determinations except for individuals for whom the Medicaid eligibility standard is a modified adjusted gross income.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid provisions and requirements regarding trusts and transferred resources for Medicaid eligibility determinations except for individuals for whom the Medicaid eligibility standard is a modified adjusted gross income.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid provisions and requirements regarding trusts and transferred resources for Medicaid eligibility determinations except for individuals for whom the Medicaid eligibility standard is a modified adjusted gross income.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid provisions and requirements regarding trusts and transferred resources for Medicaid eligibility determinations except for individuals for whom the Medicaid eligibility standard is a modified adjusted gross income.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation:

The amendment clarifies that the provisions and requirements do not apply to individuals for whom the Medicaid eligibility standard is a modified adjusted gross income (or MAGI) or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and

targeted low-income children with income up to 150 percent of the federal poverty level. The amendment also deletes the definitions.

- (b) The necessity of the amendment to this administrative regulation: The amendments exempting the MAGI population and former foster care individuals are necessary to comply with Affordable Care Act mandates. Deleting the definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20 – the new chapter which will house Medicaid eligibility administrative regulations. Language and formatting revisions are necessary to comply with KRS Chapter 13A requirements and standards.
  - (c) How the amendment conforms to the content of the authorizing statutes:  
This amendment conforms to the content of the Affordable Care Act by establishing that resource requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income as the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.
  - (d) How the amendment will assist in the effective administration of the statutes:  
This amendment will assist in the effective administration of the Affordable Care Act by establishing that resource requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income as the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage.
- (3)** List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.
- (4)** Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment.  
Individuals who wish to be eligible for Medicaid benefits will continue to need to comply with the Medicaid resource requirements except for individuals whose Medicaid eligibility will be determined using a modified adjusted gross income as the Medicaid eligibility standard or former foster care individuals.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals whose income standard is a modified adjusted gross income or former foster care individuals will benefit due to being exempt from resource requirements.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
  - (a) Initially: DMS anticipates no cost as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard or former foster care individuals from the trust and transferred resource requirements established in this administrative regulation.
  - (b) On a continuing basis: The response in paragraph (a) also applies here.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement the amendment.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is only applied in that the provisions do not apply to individuals for whom a modified adjusted gross income is the Medicaid eligibility income standard or to former foster care individuals as the Affordable Care Act prohibits this.

## FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 20:030E

Agency Contact Person: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14)(C) and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).
2. State compliance standards. KRS 205.520(3) authorizes the cabinet to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.
3. Minimum or uniform standards contained in the federal mandate. The federal law prohibits the application of a resource test to the MAGI population or to the former foster care population.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? It does not impose stricter, additional, or different responsibilities or requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. It does not impose stricter, additional, or different responsibilities or requirements.



## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 20:030E

Agency Contact Person: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
  - (c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the trust and transferred resource requirements established in this administrative regulation nor from exempting former foster care individuals from the standards.
  - (d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the trust and transferred resource requirements established in this administrative regulation nor from exempting former foster care individuals from the standards.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): .

Expenditures (+/-):